FILED
DEC 10 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-195

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

VAN D. MUELLER and JUNE E. NOYES,

Petitioners,

—v.—

CLYDE E. ALLEN, JR., DENNIS J. BERTHIAUME, KAREN F. BERTHIAUME, THOMAS W. DZIK, MARY I. DZIK, EDWARD F. FUJAN, JOLEEN A. FUJAN, BRENDA B. BECKER, RICHARD C. HOLLINGSWORTH, MARJORIE HOLLINGSWORTH, ROGER DEHAAN and DOROTHY DEHAAN,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED JULY 29, 1982
CERTIORARI GRANTED OCTOBER 4, 1982

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[1]The Opinion of the Court of Appeals, Memorandum and Order of the District Court, and Judgment of the Court of Appeals are reproduced in the Appendix to Petitioners' Petition for a Writ of Certiorari.

RELEVANT DOCKET ENTRIES

7-1-80	Complaint and Requests for Admission and Interrogatories filed. Summons issued.
9-15-80	Order granting motions of intervenors to intervene as additional defendants individually and on behalf of the taxpayers of the State of Minnesota is filed. Intervenors are to serve an Answer to the Complaint within ten (10) days of the service of the Order.
9-26-80	Order filed granting defendant Allen's motion for a protective order. Order stays plaintiffs' discovery until such time as defendant's motion to dismiss has been

determined. If such motion has not been determined within thirty (30) days of the hearing on such motion, plaintiffs may move for lifting of the order.

10-14-80 Memorandum and Order of the District Court granting defendant Allen's motion to dismiss as to Plaintiffs Randall Tigue, Albert L. Gallop and Edward C. Bolstad. Defendant Allen's Motion to dismiss as to Van D. Mueller and June Noyes is denied. Judgment filed.

11-1-80 Defendants' Response to Plaintiffs' Requests for Admission and Interrogatories

	is filed. Answer of defendant Allen filed.
11-20-80	Defendants' Supplemental Response to Plaintiffs' Request for Admission is filed.
1-26-81	Plaintiffs' Notice of Motion and Motion for Summary Judgment filed. Affidavits of Michael J. Lovett and James A. Lee, Jr. are attached.
2-23-81	Defendants' Notice of Motion and Motion for Summary Judgment in defendants' favor is filed.
5-13-81	Memorandum and Order of the District Court filed, denying plaintiffs' Motion for Summary Judgment, granting defendants' Cross-Motion for Summary

	Judgment and dismissing the Complaint. Judgment filed.
5-29-81	Notice of Appeal by plaintiffs from Order of the District Court is filed.
6-9-81	Statement of the Evidence Where No Record was Made Pursuant to Rule 10C is filed by plaintiffs. No exception subsequently filed by respondents.
5-28-82	Certified copy of Opinion and Judgment of the United States Court of Appeals for the Eighth Circuit, affirming the Judgment of the District Court, is filed.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Van D. Mueller, individually and on behalf of the taxpayers of the State of Minnesota, and

June Noyes, individually and on behalf of the taxpayers of the State of Minnesota,

Plaintiffs,

vs.

Clyde E. Allen, Commissioner of the Department of Revenue for the State of Minnesota,

Defendant.

and

Dennis J. Berthiaume, Karen F. Berthiaume, Thomas W. Dzik, Mary J. Dzik, Edward F. Fujan, and Joleen A. Fujan,

and

Brenda B. Becker, Richard C. Hollingsworth,

Civil Action

No. 3-80-375

DEFENDANTS RESPONSE TO PLAINTIFFS' REQUEST FOR ADMISSION AND INTERROGATORIES

Marjorie Hollingsworth, Roger DeHaan, and Dorothy DeHaan, each individually and on behalf of the taxpayers of the State of Minnesota,

Intervenors.

TO: Plaintiffs and their attorney, William I. Kampf, Ninth Floor, Commerce Building, St. Paul, Minnesota 55101

Defendant Clyde E. Allen, Jr. for his response to Request for Admission and Interrogatories states as follows:

REQUEST FOR ADMISSION NUMBER ONE

Admit or deny that all or some of those costs for which deductions are allowed under the challenged statute finance, support, and subsidize the teaching, propogation, and promotion of religion.

The Department of Revenue does not

have this information.

REQUEST FOR ADMISSION NUMBER TWO

Admit or deny that Defendant has promulgated no rule, regulation, or administrative policy, and that no such provision is enforced by Defendant de facto, which has as its effect the ensurance that amounts for which deductions are allowed under the challenged statute do not finance, support, and subsidize the teaching, propogation, and promotion of religion.

Admits

REQUEST FOR ADMISSION NUMBER THREE

Admit or deny paragraph nine (9) of the Plaintiffs' Complaint.

The Department of Revenue does not have this information.

REQUEST FOR ADMISSION NUMBER FOUR

Admit or deny paragraph eleven (11)

of the Plaintiff's Complaint.

Admits

REQUEST FOR ADMISSION NUMBER FIVE

Admit or deny that the costs for which deductions are allowed under the challenged statute are paid primarily to elementary and secondary schools having as a central purpose the promotion and advancement of religion.

The Department of Revenue does not have this information.

INTERROGATORY NUMBER ONE

Identify those facts which form the basis of your denial, if any, of each of the above Requests for Admission.

N/A

INTERROGATORY NUMBER TWO

State the number corresponding to those numbers found in paragraph nine (9) of the Plaintiffs' Complaint for

enrollments in Minnesota elementary and secondary schools for the 1979-1980 school year.

The Department of Revenue does not have this information.

INTERROGATORY NUMBER THREE

What was the revenue loss for the most recent year for which data is available by reason of deductions allowed under the challenged statute.

Estimated revenue loss of 2.4 million.

INTERROGATORY NUMBER FOUR

Identify those mechanisms used by the Defendant for the investigation of uses to which amounts deducted under the challenged statute are put.

If a return is audited, receipts are requested for all claimed deductions, including those under § 290.09, subd. 22.

INTERROGATORY NUMBER FIVE

Separately identify the number of individuals taking deductions under the challenged statute in the most recent year for which data is available by reason of attendance by dependents at:

(1) non-public, sectarian elementary and secondary schools

(2) non-public, non-sectarian elementary and secondary schools.

The Department of Revenue does not have this information.

INTERROGATORY NUMBER SIX

Separately identify the aggregate amount, in dollars, of deductions taken by individuals under the challenged statute in the most recent year for which data is available by reason of attendance at:

(1) non-public, sectarian

elementary and secondary schools

(2) non-public, non-sectarian elementary and secondary schools.

The Department of Revenue does not have this information.

INTERROGATORY NUMBER SEVEN

What is the median percentage of tuition costs used by sectarian schools in the State of Minnesota for the teaching, propogation, and promotion of those subjects not legally and commonly taught in the public schools of the State of Minnesota.

The Department of Revenue does not have this information.

INTERROGATORY NUMBER EIGHT

Identify each and every standard used by the Defendant for distinguishing between textbooks the cost of which is deductible under the challenged statute

and textbooks the cost of which is not deductible under the challenged statute.

Minn. Stat. § 290.09, subd. 22. See also attached memoranda of Gerome T. Caulfield and D. E. Lahti.

INTERROGATORY NUMBER NINE

Identify each and every standard used by the Defendant in the identification of instructional materials and equipment the cost of which is deductible under the challenged statute.

Minn. Stat. § 290.09, subd. 22. Also see attached memoranda of Gerome T. Caulfield and D. E. Lahti.

INTERROGATORY NUMBER TEN

How many non-public elementary and secondary schools in the State of Minnesota are affiliated with a religious organization, sect, or institution.

The Department of Revenue does not

have this information.

INTERROGATORY NUMBER ELEVEN

Detail the number of religiously affiliated elementary and secondary schools in the State of Minnesota according to their denominational affiliation.

The Department of Revenue does not have this information.

WARREN SPANNAUS
Attorney General

By /s/ William P. Marshall
WILLIAM P. MARSHALL
Special Assistant
Attorney General

515 Transportation Bldg.
St. Paul, Minnesota 55155
Telephone: 612/296-3206
Attorneys for Defendant

STATE OF MINNESOTA

DEPARTMENT of Revenue-Income Tax

OFFICE MEMORANDUM

DATE: February 17, 1977

TO : ALL EXAMINERS

FROM : G. T. Caulfield, Director /s/GTC
Income Tax Division

PHONE: 3436

SUBJECT: TUITION, TRANSPORTATION AND TEXTBOOK EXPENSE

We have been asked whether or not swimsuits, hockey equipment and other equipment for extra curricular activities and fees for such activities are deductible.

Section 290.09, Subdivision 22, states "As used in this subdivision, 'textbooks' shall mean and include books

and other instructional materials and equipment used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this State . . . . .". It is determined that charges for equipment used in extra curricular activities does not fall within the definition of text books as used in this subdivision and, therefore, are not deductible.

Fees for such extra curricular activities are also not deductible as they do not fall within the definition of tuition. An exception to this rule would be if the student was given course credit for such

activity, the fee would be deductible as tuition.

GTC/sk

[Names of individuals to whom copies of the Memorandum were sent have been omitted.]

STATE OF MINNESOTA

DEPARTMENT of Revenue

DATE: 7/29/77

TO : Joel Nopola,
Assistant Director
Field Operations Division

FROM : G. T. Caulfield, Director /s/GTC
Income Tax Division

PHONE: 3436

SUBJECT: Tuition and Transportation Expense

The memo issued on February 17, 1977 would be the present position of the Department regarding fees paid for extra curricular activities.

Such fees or equipment purchased in connection with any activity for which

course credit is not granted will not be allowed.

GTC/WAS/ml
copy of 2-17-77 attached

STATE OF MINNESOTA

DEPARTMENT OF REVENUE

OFFICE MEMORANDUM

DATE: February 2, 1978

TO : ALL EXAMINERS

FROM : D. E. LAHTI, Assistant Director
Income Tax Division /s/ DEL

PHONE: 3438

SUBJECT: MONTESSORI SCHOOL TUITION

The question has been raised whether the tuition expenses for Montessori schools is eligible for an income tax deduction under Mn. Stat. 290.09, subd. 22.

The expenses for tuition and transportation as well as any other expenses allowed by Mn. Stat. 290.09, subd. 22 that are paid to Montessori schools for kindergarten through grade 6

are allowable deductions not to exceed $500 for each dependent.

Care must be taken to determine that the expenses are not for pre-kindergarten level. The pre-kindergarten expenses are not deductible.

The actual kindergarten expenses paid to the Montessori schools would be deductible whether the school district in which the taxpayer lives requires kindergarten or not. The school must be located within the 5 state district as set out in the statute.

If the Montessori school tuition is paid for grades 7 through 12, the expenses limit per dependent is $700 as with any other school.

DEL:JLS:eah

STATE OF MINNESOTA

DEPARTMENT of Revenue

OFFICE MEMORANDUM

DATE: March 27, 1979

TO : GROUP CHIEFS
(Show to All Your Examiners)

FROM : Gerome T. Caulfield, Director
Income Tax Division /s/GTC
PHONE: 3436

SUBJECT: Tuition and Transportation Expense

We have been asked about the deductibility of the following items under M.S. 290.09, subd. 22. The items and answers are:

1. Camera for a photography class.
   a. The rental fee paid

to a school	Yes.
b. Purchase	No.
2. Gym clothes for physical education class.	
a. Tennis shoes and sweatsuits.	Yes, if required.
b. Ice skates-rental fee paid to school	Yes.
-purchase	No.
3. Musical instruments.	
a. Rental fee paid to school	Yes.
b. Purchase	No.
4. Band trips	No.
5. Calculators for math class.	
a. Rental fee paid to school	Yes.

	b. Purchase	No.
6.	Lab fees.	Yes.
7.	Field trips.	Yes, if required.
8.	School uniforms.	No.
9.	Trips to foreign countries to learn languages sponsored by school.	No.
10.	Choir outfits. Some schools require a certain color of dress pants and shirt or blouse and skirt.	No.
11.	Choir trips.	No.

12. Home economics class supplies and cloth for sewing projects.	Yes, only for the minimal requirements for the course.
13. Shop class purchasing special kind of wood or metal.	Yes, only for the minimal requirements for the course.
14. Art supplies for art class.	Yes, only for the minimal requirements for the course.

15. Private tutoring for slow learners to keep up with classmates.	Yes, if tuition charged by the school.
16. Driver's training.	
a. Offered by school	No.
b. Private lessons	No.
17. Cap and gown rental required to graduate with the class.	No.
18. Pencils, specific type of notebooks and required material for each individual class.	Yes.
19. Public transportation to school-MTC or taxicab	Yes.
20. Parents using their own car to take students to school.	No.

21. Summer school to keep up with classmates. Yes.

The following guidelines can be used to determine if other items are deductible or not:

1. Is the material to be primarily used for the class and not for personal use?
2. Only the basic minimum required expense can be deducted.
3. It is consumed in the normal course of the class.

GTC/DHB/ml

[Names of individuals to whom copies of the Memorandum were sent have been omitted.]

STATE OF MINNESOTA

DEPARTMENT of Revenue

OFFICE MEMORANDUM

DATE: January 7, 1980

TO : GROUP CHIEFS

(Show to All Your Examiners)

FROM : Gerome T. Caulfield, Director

Income Tax Division /s/GTC

PHONE: 3436

SUBJECT: Tuition and Transportation Expense

Driver's education class is not an extracurricular activity if the high school offers the class as an elective and the student receives credit towards the student's high school graduation. A driver's education class that meets these qualifications is part of the high school curriculum and fees charged a student to

take the class will qualify for the deduction provided in Minn. Stat. Section 290.09, subd. 22. To the extent that the previous memo, issued on March 27, 1979, is inconsistent, that memo is superseded.

When a school offers driver's education to its students but does not provide any graduation credit for the completion of the course, the fee charged by the school is not deductible because it is an extracurricular activity.

GTC/DHB/ml

[Names of individuals to whom copies of the Memorandum were sent have been omitted.]

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Civil Action

No. 3-80-375

[Title omitted in printing]

DEFENDANTS' SUPPLEMENTAL RESPONSE TO PLAINTIFFS' REQUEST FOR ADMISSION

TO: Plaintiffs and their attorney,
William I. Kampf, Ninth Floor,
Commerce Building, St. Paul,
Minnesota 55101

REQUEST FOR ADMISSION NO. 3.

Admit or deny paragraph (9) of the plaintiffs' Complaint.

Upon information informally received from the Department of Education, defendants admit as follows:

Of the total number of students enrolled in Minnesota elementary and

secondary schools for the school year 1978-1979, eighty-eight thousand five hundred twenty-four (88,524), were enrolled in non-public schools. Of these, eighty-five thousand two hundred forty-three (85,243), were enrolled in sectarian schools, and three thousand two hundred eighty-one (3,281) were enrolled in schools considering themselves non-sectarian. Eight hundred five thousand one hundred fifty-five (815,055) plus one thousand two hundred twenty-six (1226) pre-kindergarten and handicapped were enrolled in Minnesota public elementary and secondary schools for the same period. 62.60 students were enrolled in 1976-1977 in public schools located in districts outside of their residence, requiring payment of tuition, textbook, and/or transportation costs by

their parents or guardians directly.

This data was not compiled for 1978-1979.

Dated: November 19, 1980

WARREN SPANNAUS
Attorney General

/s/ William P. Marshall
WILLIAM P. MARSHALL
Special Assistant
Attorney General

515 Transportation Bldg.
St. Paul, Minnesota 55155
Telephone: 612/296-3206
Attorneys for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Civil Action

No. 3-80-395

AFFIDAVIT

[Title omitted
in printing]

Michael J. Lovett, being first duly sworn on oath, states and deposes to the Court as follows:

1. I am Supervisor, Education Statistics Section, Minnesota Department of Education.

2. The attached letter, dated December 22, 1980, and addressed to William I. Kampf, St. Paul, MN, was written by me and my signature is affixed thereon.

Further than this your affiant sayeth naught.

/s/ Michael J. Lovett

[Jurat omitted in printing]

MINNESOTA STATE DEPARTMENT OF
EDUCATION
Capitol Square, 550 Cedar Street
St. Paul, Minnesota 55101
Phone: 296-7683

December 22, 1980

William I. Kampf
Ninth Floor, Commerce Bldg.
St. Paul, MN 55101

Dear Mr. Kampf:

This is in response to your request of November 24 for three pieces of information. I understand Gary Farland of the Department of Education's State Aids Section spoke to you over the telephone about the first piece of information requested. It was decided you would send a law clerk over to examine the reports State Aids has on

F-29-6's, "Special Report of School Districts for Aid."

In an effort to answer the second question, one of our staff research analysts, Sharon Sorenson, has attempted to identify the number of Minnesota students attending school in the four bordering states. Because these children are computer coded as nonresidents only, whether they are out-of-state or in-state pupils, it's nearly impossible for someone in our department to determine the figure you've requested. For our purposes--state aids, for example--it doesn't matter that these pupils do not live in Minnesota; the important factors are that they are not residents of the school district they attend and tuition is paid by the resident school district.

Sharon also called the state

departments of education in Wisconsin, Iowa, South Dakota, and North Dakota but these departments code out-of-state students in a similar manner. The only suggestion as to how to arrive at this figure is to contact all the school districts in Wisconsin, Iowa, South Dakota, and North Dakota that border on Minnesota. The superintendents of each of these districts should be able to tell whether or not they have Minnesota students attending their districts. But even if this were a feasible project, a few students would be missed because they may attend a school farther from the border than this.

Your third question is answerable. Of the 533 nonpublic schools for which we have 1979-80 school year enrollment data and which enroll children of at least

kindergarten age, 53 report themselves nonsectarian. These 53 schools represent 4,146 students, or 4.56 percent of the 90,954 total number of nonpublic students.

Sincerely,

/s/ Michael J. Lovett

Michael J. Lovett

Supervisor, Education Statistics Section

MJL:lla

AN EQUAL OPPORTUNITY EMPLOYER

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Civil Action

No. 3-80-395

AFFIDAVIT

[Title and jurat
omitted in printing]

JAMES A. LEE, JR., being first duly sworn on oath, states and deposes as follows:

1. I am a law student assisting William I. Kampf, attorney for plaintiffs, in the above captioned matter.

2. On January 20, 1981, I examined four files of documents entitled State Report No. F-29-6, now in the custody of the Minnesota Department of Education, State Aids Division.

3. State Report No. F-29-6 is

prepared by the Supreintendents [sic] of the publis [sic] school districts of Minnesota and compiled in Minnesota.

4. One item of data reported in these documents is the number of school children in grades K-12 in each of the public school districts of Minnesota who pay tuition to attend the schools of that district.

5. I compiled this data for the school years 1977-1978 and 1978-1979, and found that forty (40) and seventy nine (79) schoolchildren, respectively, met the description above.

FURTHER THAN THIS YOUR AFFIANT SAYETH NOT.

/s/ James A. Lee, Jr.
JAMES A. LEE, JR.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Civil Action

No. 3-80-395

AFFIDAVIT OF
RONALD MOIR

[Title and jurat
omitted in printing]

RONALD MOIR, being duly sworn, deposes and states:

1. I am presently the Director of School Financial Management for the Department of Education of the State of Minnesota and have held this position since July 1, 1975.

2. My responsibilities include, but are not limited to the processing of summary financial data from Minnesota School Districts, according to the

Uniform Financial Accounting and Reporting Standards.

3. Included in the financial data collected by the Department are the dollar amounts received by the State from tuition and fee payments from patrons. These dollar amounts are compiled on a yearly basis pursuant to Account Code 1-10.21 and 1-10.38 of the "Manual of Instructions for Uniform Financial Accounting for Minnesota School Districts". A copy of these account definitions are attached here to and incorporated by reference as Exhibit A.

4. The following dollar amounts have been compiled pursuant to the regulations established in the Manual of Instructions for the year 1978-1979.

Account Code 1-10.21

Regular Day School Tuition From Patrons:

Revenues from students, parents or guardians as tuition payments for education classes. Included is the charge for driver education, other than summer school.

1978-79 Total Payment to all districts for K-12 students was $2,005,142.00 (two million five thousand one hundred forty two dollars).

Account Code 1-10.38

Fees From Patrons

Revenues from fees that a school board may charge a student pursuant to Minn. Stat. §§ 120.71 - 120.76 (1978).

1978-1979 Total fees from Patrons: $907,204.00 (nine hundred seven thousand two hundred and four dollars).

Further, affiant saith not.

/s/ Ronald Moir
RONALD MOIR

MANUAL OF INSTRUCTIONS FOR UNIFORM FINANCIAL ACCOUNTING FOR MINNESOTA SCHOOL DISTRICTS

(1977 Revision)

STATE OF MINNESOTA

DEPARTMENT OF EDUCATION

St. Paul, Minnesota

property (M.S. 273.02, subd. 4), state forest land (M.S. 89.036), tree growth (M.S. 270.38, subd. 8), auxiliary forest (M.S. 88.51, subd. 1 and 88.52, subd. 4) and late settlement interest (M.S. 276.11).

1-10.21 Regular Day School Tuition from Patrons

Enter revenues from students, parents, or guardians as tuition payments for education classes. Include the charge for driver education, other than summer school.

1-10.38 Fees from Patrons

Enter revenues from fees that a school board may charge a student pursuant to M.S. 120.71 to 120.76.

1-10.4 Student Activity Revenue

Enter revenues from cocurricular and extracurricular student activities. See definitions of cocurricular and extracurricular activities under the student activity expenditure section in the 1000 series.

1-10.41 Athletics

1-10.411 Boys

1-10.412 Girls

1-10.413 Boys and Girls

1-10.42 Other (additional codes to be added as needed)

1.10.8 Other Revenue from Local Sources

1-10.82 Interest Income

Enter interest income from temporary investments and interest income from inter fund loans.

1-10.88 Miscellaneous Revenue from Local Sources

(Formerly 10.84, 10.85, 10.86, 10.88, 45.0)

1.10.881 Rent from School Facilities

Enter revenues from the rental of school property which is being used for school purposes. Examples: rental of auditoriums, gymnasiums, cafeteria, lunchrooms, and classrooms.

1.10.882 Rent from Property Other than School Facilities

Enter gross revenues from rents and leases of pro-

perty which is not being
used for school purposes.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Civil Action

No. 3-80-395

STATEMENT
OF THE
EVIDENCE
WHEN NO
REPORT
WAS MADE
PURSUANT TO
RULE 10C

[Title omitted
in printing]

Plaintiffs/Appellants in the above-entitled proceeding add this Statement of Evidence regarding certain proceedings had on February 23, 1981; said proceedings had before Magistrate Cudd when no reporter was present. During the course of argument of unrelated Motion to Compel Response to Request for Admission, William P.

Marshall, Special Assistant Attorney General, then appearing for Defendant Allen stated to the Court that the only data available regarding deductions taken under Minn. Stat. § 290.09, Subd. 22 were those already in the record and available to the Plaintiffs/Appellants; there being no other data regarding deductions as to public or private schools or sectarian or non-sectarian schools developed or kept by the State of Minnesota in any of its departments.

DATED this 8th day of June, 1981.

/s/ William I. Kampf

WILLIAM I. KAMPF
Attorney for Plaintiffs/
Appellants
1320 North Central Life
Tower, Town Square
St. Paul, Minnesota 55101
Telephone: (612) 291-8129